

INDIANA DEPARTMENT OF TRANSPORTATION

100 North Senate Avenue, Room N725
Indianapolis, Indiana 46204-2249

January 1994

Contract Audit Circular: 93-12-09

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| SUBJECT: | Legal fees - in defense of lawsuits |
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DEFINITION ISSUE: During an overhead survey of a consultant, the costs for legal fees paid in defense of a lawsuit may be encountered.

ALLOWABILITY: In accordance with FAR 31.202 any cost that can be identified specifically with a particular project should be a direct cost and not treated as an indirect cost.

EXAMPLE 1.

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| APPLICATION: | The consultant incurred legal expenses as the result of <u>purported gross negligence</u> resulting from failure of a specific structure designed by the consultant. |
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| ACTION: | The legal fees attributable to the defense of this lawsuit would not be allowable indirect cost since they were directly related to a specific project. |
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EXAMPLE 2.

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| APPLICATION: | The consultant incurred legal expenses in defense of a suit filed against the design firm, the construction firm and the general contractor without any one particularly being determined to be at fault. |
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| ACTION: | The defense of this type claim would be allowed as an overhead expense. |
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EXAMPLE 3.

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| APPLICATION: | The consultant was named in a suit against the design firm, the construction firm and the LPA. The consultant did not have professional liability insurance, and therefore elected to make an out of court settlement with the claimant in order to be removed from the suit. The settlement did not include admission of guilt but was made in lieu of being involved in a long and costly court case. |
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| ACTION: | The cost of this settlement would be allowed as an overhead expense under the FAR self insurance clause provided it did not exceed the cost of comparable purchased professional liability insurance. |
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SOURCE: FAR 31.202, FAR 31.205-33, and FAR 31.205-19